IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 110 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

DEEPAK NITRITE LTD.

Appearance:

1. INCOME TAX REFERENCE No. 110 of 1987
MR AKIL QURESHI FOR MR MANISH R BHATT for Applicant.
MR MANISH J.SHAH for Respondent-assessee.

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 31/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

1 At the instance on the revenue, the following two questions have been referred to this Court under the provisions of section 256(1) of the Income Tax Act,1961 for the opinion of this Court.

"1. Whether, in law and on facts, the appellate Tribunal is right in confirming the view taken by the Commissioner of Income-tax (appeals) in deleting the addition of Rs.98.946/- out of foreign tour expenses.

5. Whether, in law and on facts, the assessee is entitled to the inclusion of research and development capital assets in capital employed for the purpose of section 80J of the Income-tax Act,1961?"

2 Learned Advocate Mr.Akil Qureshi has appeared for the applicant and learned Advocate Mr.Manish J.Shah has appeared for the respondent-assessee.

3 It has been submitted by the learned Advocate that during the pendency of the Reference both the questions have been decided.

4 So far as the first question is concerned, in the case of the assessee, a similar question was referred to this Court and this Court, in the case of C.I.T. vs. Deepak Nitrite Ltd., 247 I.T.R.362, has decided the same in the negative i.e. against the assessee and in favour of the revenue. We accordingly answer the said question in the negative i.e. against the assessee and in favour of the revenue.

5 So far as the second question is concerned it has been submitted by the learned Advocates that the said question has been decided in the case of C.I.T. vs. Sarabhai Sons Pvt.Ltd.,204 I.T.R.728.

6 In view of the judgment delivered in the said case, we answer the said question in the affirmative i.e. in favour of the assessee and against the revenue.

7 The Reference thus stands disposed of accordingly with no order as to costs.

Sd/- Sd/-
(A.R.Dave, J) (D.A.Mehta,J)

m.m.bhatt